



**The Comptroller General
of the United States**

Washington, D.C. 20548

Hunter

Decision

Matter of: W.B. Jolley
File: B-234490
Date: May 26, 1989

DIGEST

1. A solicitation provision requiring a cost proposal to be submitted on a computer disk is not unduly restrictive of competition where experience has shown that the requirement reduces the time and errors in evaluating cost proposals containing numerous bid items, and complying with the requirement involves a minimal amount of expense and effort.
2. Where evaluation factors are clearly set forth and their relative importance is specified, solicitation is consistent with applicable regulations requiring adequate specificity in evaluation scheme.
3. Use of negotiated rather than sealed bid procedures in procuring maintenance services is unobjectionable where consolidation of numerous, diverse services into one contract created a complex procurement that agency determined necessitated discussions to determine offerors' management and administrative capabilities, as well as their technical understanding of the work.

DECISION

W.B. Jolley protests provisions in request for proposals (RFP) No. DACW56-89-R-0004, issued by the Army Corps of Engineers for maintenance services at Pat Mayse Lake, Texas. Specifically, Jolley protests that cost proposals should not have to be submitted on computer disks; the solicitation improperly does not include measurable, minimum requirements for each evaluation factor; and the Army improperly is conducting the procurement on a negotiated rather than a sealed bid basis.

We deny the protest.

045584/138767

COMPUTER DISK

Jolley contends that only offerors possessing existing computer capabilities could meet the solicitation requirement that offerors submit their cost/price proposals on floppy computer disks using Lotus 1, 2, or 3 programs on IBM or IBM compatible computers, and that this requirement therefore unduly restricts competition.

When a protester alleges that specifications unduly restrict competition, the agency bears the burden of presenting prima facie support for its position that the specifications are necessary to meet its actual minimum needs. Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634. This requirement reflects the agency's obligation to formulate specifications to maximize competition. Id. Once the agency establishes support for the challenged specifications, however, the burden shifts to the protester to show that the specifications clearly do not represent the government's minimum needs. This requirement reflects our view that the agency is in the best position to determine the government's minimum needs and the best means of accommodating those needs. Id.

We find the Army has made a prima facie showing that the computer disk requirement reasonably reflects the government's needs. The Army imposed the requirement to reduce the time and errors made in preparing and evaluating cost proposals and unit price extensions for the consolidated services RFP, which contains approximately 500 line items. The requirement is based on recent Army experience with similar solicitation schedules, which indicated that the requirement both facilitates the offerors computation of item prices and reduces the number of mistakes made in evaluating the numbers.

It is the agency's view, moreover, and we must agree, that the computer disk requirement really does not even restrict competition in any significant way. The Army furnished the disks to offerors at no cost; the 500 items were pre-formatted and programmed on the disk so that offerors merely had to type in their individual item prices in the appropriate spaces. For those offerors that did not have direct access to computers, the Army advised that most commercial typists or computer programming companies provide this service for a fee as low as \$25. Jolley has not attempted to rebut the Corps' explanation, and the record contains no other evidence supporting the firm's contention that the disk requirement restricts competition. We conclude that the requirement is unobjectionable.

MEASURABLE EVALUATION STANDARDS

Jolley contends that the solicitation violates Federal Acquisition Regulation (FAR) § 15.605(e) because it does not include evaluation factors informing offerors of a measurable minimum standard for each evaluation factor. Jolley contends, for example, that the FAR required the solicitation to include as an evaluation factor a minimum acceptable number of years of experience in an area of work, as opposed to merely stating that offerors' experience in that area will be evaluated. Jolley contends that the absence of measurable minimum standards deprives offerors of adequate notice of the evaluation requirements, and leaves the contracting officer with no quantifiable, objective criteria against which to evaluate the proposals.

Jolley's argument is founded on a misunderstanding of the regulation. Section 15.605(e) of the FAR provides that:

"The solicitation shall clearly state the evaluation factors, including price or cost and any significant subfactor, that will be considered in making the source selection and their relative importance . . . The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors."

We think the Army's solicitation here is fully compliant with this provision. The solicitation specifies the factors that will be considered in selecting a contractor as management/technical and cost/price. The solicitation also advises offerors of the factors' relative importance, stating that the management/technical factor is the most important element in the evaluation process, and listing the four separate management/technical subfactors (technical requirements, management requirements, experience and safety) in descending order of importance.

Contrary to Jolley's interpretation of FAR § 15.605(e), the contracting officer is not required to formulate minimum standards (such as minimum acceptable experience levels) where the agency has no need for a contractor meeting certain objective standards; indeed, including such standards with no justification, would be improper in that the solicitation requirements improperly would exceed the government's minimum needs. See Skyland Services, Inc., B-229700, Feb. 9, 1988, 88-1 CPD ¶ 129. We thus read FAR § 15.605(e) as requiring disclosure of minimum requirements only where such requirements are deemed necessary by the

agency and will be used in the evaluation. Here, minimum standards were not necessary, as the contracting officer determined that the best evaluation method was to compare proposals against each other, not against an objective minimum standard.

SOLICITATION METHOD

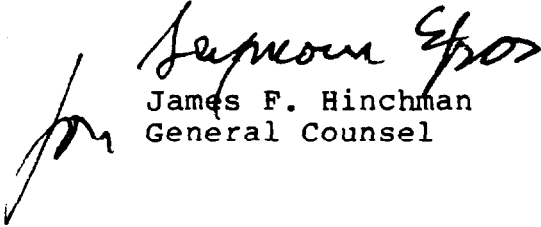
Jolley challenges the Army's decision to conduct this procurement under negotiated, rather than sealed bid, procedures. Jolley contends that the Army was required to use an IFB instead of an RFP because all of the conditions listed in the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(2) (Supp. IV 1986), as making sealed bidding appropriate, have been met. We disagree.

CICA eliminated the previous statutory preference for sealed bidding, and required instead that agencies obtain full and open competition using the competitive procedure best suited under the circumstances of the procurement. 10 U.S.C. § 2304(a)(1). CICA does provide that sealed bidding is to be used if (1) time permits; (2) the contract award will be based on price and other price-related factors; (3) it is not necessary to conduct discussions with offerors; and (4) there is a reasonable expectation of receiving more than one bid. 10 U.S.C. § 2304(a)(2)(A); FAR § 6.401. The determination regarding which competitive procedure is appropriate, however, ultimately involves the exercise of business judgment by the contracting officer, T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 CPD ¶ 354, and we will question a determination that sealed bidding is inappropriate due to the need to evaluate and discuss technical proposals only where the protester shows that the determination was unreasonable. A.J. Fowler Corp.; Reliable Trash Service, Inc., B-233326; B-233326.2, Feb. 16, 1989, 89-1 CPD ¶ ____.

We find no basis to object to the Army's use of negotiated procedures here, since award is not to be based solely on price or price-related factors, and the Army determined that discussions are required. Although Jolley contends that discussions are not necessary since each individual maintenance service required in the RFP is for routine work, the contracting officer found it necessary to conduct discussions with the offerors about their demonstrated ability in management, experience, administrative procedures, and technical understanding, because the RFP consolidated numerous, diverse maintenance services into one contract, which created an innovative and complex procurement requiring a well-managed effort from the successful offeror. In these circumstances, we think the

Army's decision to use negotiated rather than sealed bid procedures was reasonably aimed at the selection of the overall best-qualified contractor. Use of negotiated procedures therefore is unobjectionable.

The protest is denied.



James F. Hinchman
General Counsel